

**Benton County Planning Board
Public Hearing Minutes
November 20, 2007, 5:30 p.m.**

Call to Order & Roll Call: The following Benton County Planning Board members were present: Mark Gray, Caleb Henry, Bill Kneebone, Tim Sorey, and Heath Ward. Scott Borman and Adele Lucas were absent. The following Benton County Planning Office staff members were present: Ashley Pope, Kathleen Davis, and Karen Stewart.

Announcements: Staff made no announcements.

New Business:

1. Informal Plat Subdivision Time Extension - **Edens Estates** - 10655 Ervin McGarrah Road, Lowell - Mark Foster

Mark Foster represented the time extension request.

Ms. Pope stated that the informal plat subdivision had been approved in 2004, but that the plat approval expired in 2006. The plat was never filed for record, even though the applicant had met all of the conditions for approval. She stated that the applicant had received the approval of the City of Lowell (the project is in their planning area) and is now asking for either a time extension or for the Board to approve the informal plat.

Mr. Sorey asked if the Board wanted to approve the time extension or the informal plat; Ms. Pope stated that both would end in the same result, since the applicant is ready to submit the final plat.

Mr. Sorey called for any public comment on the project - there was none. There was no Board discussion on the project.

Mr. Kneebone made a motion to approve the informal plat subdivision time extension; Mr. Ward seconded the motion. Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward all voted in favor of the project. The motion was passed.

2. Lot Split - **Rohrbough Subdivision, Lot 2-A** - Pleasant Ridge Road, Rogers - Phillips Land Surveying

There was no representation for this project.

Ms. Pope asked if Don Phillips had been notified that the meeting had been moved from Wednesday to Tuesday; Ms. Davis stated that she believed he had been notified.

Mr. Sorey decided to move this item down on the agenda to allow more time for Mr. Phillips to arrive.

3. Variance from Subdivision Regulations - **Irvin Moore** - 20205 North Highway 127, Garfield - Gene Buescher

There was no representation for this project.

Mr. Sorey asked Staff if this item should be moved down on the agenda, as well. Ms. Pope stated that the applicant had met all stipulations from the TAC meeting, including showing the septic field on the plat.

Mr. Ward asked about the stipulation that "the Board may either require that Mr. Moore submit a subdivision application for Tract A and Tract B or grant the variance;" Ms. Pope stated that she thought the Board had indicated that granting the variance would be consistent with what they had done in the past. Mr. Ward agreed that that was the case.

Staff recommended approval.

Mr. Sorey called for any public comment on the project - there was none. There was no Board discussion on the project.

Mr. Ward made a motion to approve the variance from subdivision regulations; Mr. Gray seconded the motion. Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward all voted in favor of the project. The motion was passed.

4. Large Scale Development - **BWRPWA Water Storage Tank** - Corner of Noah Road and Kitty Road, Centerton - Crist Engineering

Stewart Noland of Crist Engineering represented the large scale development.

Mr. Sorey noted that there were "overhang issues" on this project; Ms. Pope concurred, adding that the applicant had requested a variance from the set-back requirements in order to address that issue. Mr. Ward verified that the variance request was in the letter that the applicant had submitted; Ms. Pope stated that that was correct and noted that the applicant cited the reasons for the variance request in the letter: architectural aspects of the composite tank, geotechnical issues, the fact that the pedestal will not encroach on the set-backs, hydraulic modeling, the existing water line easement, the need for water supply to the area, and the unlikelihood of failure of the structure.

Ms. Pope asked Mr. Noland how far it would be from the edge of the right-of-way to the bowl of the structure; Mr. Noland stated that it would be 1 to 2 feet from the edge of the right-of-way, but it would be over 65 feet in the air.

Mr. Noland reiterated that geotechnical testing had been done on the site and noted that this was the reason that the tower is off-center on the property. He added that "the rock as it goes from south to north dives, and so what we tried to do is move the tank back on top of the rock to preclude differential settlement of the tank because there's some tremendous foundation loads."

Mr. Noland stated that he had sent the letter asking for the variance request, but felt that there were a few additional reasons that the variance should be granted:

1. This is a public utility for public service; there will be no commercial gain from this project.
2. This site at the intersection of Noah Road and Kitty Road is ideally located for easy access.
3. Neither of the companies that are likely to construct this tower (Landmark Structures or Chicago Bridge and Iron) have had any composite tower failures in over 20 years of building.
4. The tower will be large, but it is an attractive structure; it will have a rusticated concrete base.
5. There will be minimal traffic associated with this site; there will not be maintenance personnel onsite all of the time - only when inspection or maintenance is necessary.

Mr. Noland noted that the BWRPWA has reached an agreement with the current property owner, who acquired the property after the water line was put into place about ten years ago, regarding the sale of the property. He also noted that the City of Centerton has deferred to the Benton County Planning Board regarding this project; the City of Centerton raised no concerns regarding the project.

Mr. Noland reiterated that the pedestal of the water storage tank was moved for geotechnical reasons and added that it is more than 25 feet from the edge of the right-of-way and about 45 feet from the edge of the existing road. He stated that the bowl of the tank is about 20 feet from the edge of the road to the north and he reiterated that it will be about 65 feet above the ground.

Mr. Noland stated that the BWRPWA is considering other sites for future use; he added that the public notification had been done regarding the proposed site on Noah and Kitty Roads, but no public comment had been received. He mentioned that the reason for placing the tank in this location is the growing demand for water from Centerton and Bella Vista.

Mr. Noland stated that he felt that "they do not have fee title to the water line easement, but I can tell you that water line easement is permanent. That 36-inch water line that goes across there is not likely to be moved in the near term and, if anything, there'll be another one laid down beside it at some point in time."

Mr. Noland informed the Board that the BWRPWA has made an agreement with Carroll Electric and will relocate a power line on Kitty Road. He stated that he understood it was their risk, but that the BWRPWA has spent about twenty thousand dollars on geotechnical testing. He asked that the Board take all of this information into consideration when deciding whether or not to grant the requested variance. He reiterated that this was a public utility and that there will be no commercial gain for anyone.

Mr. Sorey called for any public comment on the project - there was none. There was no Board discussion on the project.

Mr. Ward made a motion to approve the variance from set-back requirements; Mr. Gray seconded the motion. Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward all voted in favor of the variance. The motion was passed.

Mr. Kneebone made a motion to approve the large scale development; Mr. Ward seconded the motion. Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward all voted in favor of the project. The motion was passed.

Mr. Sorey stated that a "water tank and tower is not the same as possibly a power pole that is commonly seen in that right-of-way area. Make Staff aware if that's where you've got to have it... but if it's not, it'd be nice to get it out of that set-back." He added that he felt that "the public would feel more comfortable with it pushed back away from the road." Mr. Noland stated that he "couldn't agree more," but argued that in this case there were some constraints; he added that the future site that is being considered will meet all of the Planning Board's requirements.

5. Large Scale Development - **BWRPWA Chlorine Dioxide Feed Facility** - 16675 Kostner Road, Rogers - Crist Engineering

Stewart Noland of Crist Engineering represented the large scale development.

Ms. Pope stated that the applicant is requesting a variance on this project and that Mr. Noland would explain the variance request and the reasons for it. She added that the main concern was exposing the facility to potential vandalism.

Mr. Noland began by informing the Board that the applicant is open to options, but that rotating the building in the way suggested would necessitate placement of the doors on the side of the building facing the road. He expressed concern regarding "somebody driving by and firing a high-powered rifle into a room that has chlorine gas cylinders in it." He asked the Board to consider this when deciding whether or not to require the building to be rotated. He stated that he believed the best they could do was to get the building 15 feet from the right-of-way and added that this building is in a remote area. He asserted that "safety and vulnerability assessments of water systems (have) been a point of emphasis of Homeland Security since 9-11."

Mr. Noland informed the Board that the BWRPWA does not have the option of using sodium hypochlorite at this facility and that chlorine gas must be used.

Mr. Sorey clarified that by rotating the building, the doors would be exposed to the road and asked for clarification on the currently-proposed placement of the doors; Mr. Noland stated that the currently-proposed placement of the doors would be, "90 degrees to the road."

Mr. Sorey called for any public comment on the project - there was none.

Mr. Ward stated that he felt that the placement of the doors on the building was a legitimate concern.

Mr. Henry asked if the doors had to face the road side of the building if the building were rotated; Mr. Noland stated that he thought so, due to the steep grade of the property. Mr. Sorey added that the floor plan probably dictated the placement of the doors. Mr. Henry stated that that was his question, whether or not the doors had to be placed where they are; Mr. Noland stated that, yes, the floor plan dictated that the doors be placed where they are.

Ms. Pope stated that her concern with granting a variance in this case would be the chemicals involved being that close to the right of way. Mr. Ward stated that he had had some experience with chlorine dioxide and his concern would be potential vandalism or accidental damage from a vehicle. Ms. Pope stated that there would be a greater likelihood of damage by a vehicle and emphasized that the building is one foot from the right-of-way.

Mr. Noland informed the Board that the side of the building containing the chlorine dioxide would be away from the road on the side of the building nearest the substation. He also noted that the chlorine dioxide would be in a separate room of the facility.

Mr. Henry asked for clarification regarding where the chemicals actually leave the building, enquiring whether they exit on the road side of the building. Mr. Noland stated that they do exit on the road side of the building. Mr. Henry then asked if the building were rotated if the chlorine dioxide would essentially be in the same place. Mr. Ward agreed that it appeared that the chlorine dioxide would be in roughly the same location if the building was rotated. Mr. Noland stated that that was correct, but expressed concern regarding grading issues. Mr. Henry stated that he didn't think the applicant would "be encroaching any closer than the corner of this building is right now if you rotated it," and illustrated his point by suggesting that the applicant spin the building on a central axis. Mr. Ward concurred that this solution would provide the applicant with "the best of both worlds," since the building would be further from the right-of-way and the doors would face away from the road.

Mr. Noland felt that this solution was feasible and requested that the project be tabled. He stated that he would submit a revised site plan to Staff.

Mr. Sorey stated that there was no public comment on this project during this meeting, but that this project would be revisited at next month's meeting, so Mr. Noland did not need to publicly notify adjacent property owners again.

Mr. Kneebone made a motion to table the large scale development; Mr. Ward seconded the motion. Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward all voted in favor of the project. The motion was passed.

Mr. Noland asked if he needed to be present at the next TAC Meeting; Mr. Sorey stated that he would, due to the reconfiguration.

6. Large Scale Development Expansion - **BWRPWA Water Treatment Plant** - 15531 Woods Lodge Road, Rogers - Crist Engineering

Stewart Noland of Crist Engineering represented the large scale development expansion.

Mr. Sorey stated that the only outstanding stipulation on this project was for the applicant to "submit a complete large scale development site plan" and asked if Staff had received a revised site plan. Mr. Noland stated that he had not understood the Board's instructions to mean that he needed to turn in a revised site plan; he stated that he thought that the revision applied to the drainage calculations. Ms. Pope stated that the applicant had submitted the drainage calculations and that Mr. Sorey should have received a copy of it.

Ms. Pope explained that Staff normally receives a "survey-type site plan," clarifying that the whole site would not necessarily need to be shown in this case due to the size of the

site, but that more detail than what was provided was necessary. Mr. Sorey agreed and added that there is quite a bit of information on the submitted site plan, but that it lacks a grading plan among other things. Mr. Sorey stated that the applicant is lacking required checklist items; Ms. Pope specified that the flood certification and the notarized property owners' signatures were missing; Mr. Noland asserted that he had submitted those items. Ms. Pope asked if he had prepared a site plan to be signed by Staff; Mr. Sorey explained that there would be a signature block for the surveyor and engineer.

Mr. Noland stated that the property had not been resurveyed since it was a pre-existing site. Mr. Sorey stated that in that case, the Board would allow the original survey to be attached to the site plan (which would include grading and utility plans). Mr. Noland stated that he had included some survey data and information with the original submittal, but that it was in the form of a legal description; Ms. Pope confirmed that the applicant had submitted some copies of deeds.

Mr. Sorey stated that in order to move forward, the Board would have to have a request to grant a variance from the standard large scale development requirements, since all of the documentation had not been submitted.

Mr. Noland interjected that the drainage changes to the site would be minimal, since the proposed site would be out in the middle of a field. He stated that everything drains to the southwest of the property and added that he showed the existing plant, existing lagoons, the existing roads, and the proposed project on the plans he submitted.

Mr. Sorey called for any public comment on the project - there was none.

Mr. Gray asked if the Board was being asked to grant a variance; Ms. Pope stated that she did not believe there had been a variance application submitted for this project.

Mr. Ward clarified that in order "to move the project forward, we'd have to waive the requirements." Mr. Sorey stated that the Board could consider the application as it is to be the large scale development application. Mr. Gray stated that the Board would still have to waive some of the checklist requirements; Ms. Pope concurred.

Mr. Gray stated that what appeared to be missing was the site plan with the signature blocks; Mr. Sorey stated that in comparison to some of the other large scale development applications that the Board had approved, this application is not lacking very much. Mr. Ward agreed that a lot of the necessary information had been submitted. Mr. Sorey did not feel that it was a "large scale development plan."

Mr. Henry expressed his concern about setting a precedent by accepting an application in this form.

Mr. Ward questioned whether the Board could approve the project with the stipulation that the drawing be corrected and resubmitted or if that would be "bending it too much;" Mr. Henry felt that it would be "putting the cart before your horse." Mr. Sorey could not recall the Board having done anything like this in the past.

Ms. Pope felt that the Board should list the missing requirements; Mr. Noland interjected he was unclear on what requirements are missing. He added that in order to submit a survey, the applicant would have to hire a surveyor to survey the property again; he felt

that he had "fairly accurately shown the corners and everything based on the information."

Mr. Sorey asked if the applicant had an overall survey of the property from anytime in the past; Mr. Noland stated that they did not, and added that they had given him everything they had regarding the property and that he had turned it in to Staff with his submittal. Mr. Noland stated that the request is not unreasonable, but reiterated that if the Board required a survey, the applicant would have to have the property surveyed again.

Mr. Sorey stated that he did not have any great concerns regarding whether or not the project is located on property owned by the BWRPWA; he elaborated that the topography is detailed enough. He reiterated that he felt they were missing a "true large scale development plan showing a few of the checklist items that are part of those requirements." He noted that the proposed grades are missing.

Mr. Ward said that he concurred with Mr. Henry in wanting to avoid setting this type of precedent, adding that there was a lot of information submitted, but it is incomplete. Mr. Kneebone summarized that the Board needed to "have an up and down vote or table it - one or the other..."

Staff recommended tabling the project.

Mr. Noland asked Staff to send him a list of the missing requirements; Ms. Pope stated that they should probably meet to go over the list, or she could email him.

Mr. Noland asked if the Board would require a survey; Mr. Sorey stated, "Not necessarily - if you've got enough deeds showing they own the property and it's clear that this is all well within that."

Mr. Gray stated that, "trying to interpret a deed onto the ground is the survey, so, no, it would not be a boundary by Arkansas law. It would not mean that I wouldn't approve this project, because you're well away from what you're representing as your property lines."

Mr. Sorey felt that it would be helpful if the applicant had an original survey; Mr. Gray stated that the property may never have been surveyed; he noted that writing a deed doesn't require a survey. Mr. Gray suggested that the applicant might try to show hardship (to avoid having the property surveyed.)

Mr. Sorey stated that Mr. Noland should first attempt to find an existing survey, and then ask his client whether or not they wish to proceed with getting a survey done. He said that if they do not wish to have one done, they need to submit a variance request. Mr. Noland stated that he would investigate the matter.

Mr. Noland requested that the project be tabled.

Mr. Kneebone made a motion to table the large scale development expansion; Mr. Gray seconded the motion. Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward all voted in favor of tabling the project. The motion was passed.

Mr. Sorey stated that Staff should get another copy of the drainage report before the next time this project is brought before the Board; Ms. Pope apologized for not having it readily available.

Mr. Noland enquired whether Staff did have the copy he submitted; Ms. Pope stated that he had submitted his calculations and the drainage areas.

7. Large Scale Development Expansion - **Griggs' Car Lot** - 15080 Highway 43 South, Siloam Springs - Ramsey Surveying, Inc.

Robert Griggs represented the variance request.

Ms. Pope asked if Mr. Griggs had resubmitted any items to Staff; Mr. Griggs stated that he had been unable to provide the required items.

Mr. Griggs stated that he is requesting a variance from the large scale development regulations. Ms. Pope clarified that he was requesting a variance from the drainage and erosion control requirements, and added that the Board had decided at the TAC meeting that the drainage study would be needed. She said that the topography and more detail regarding the automobile parking layout were supposed to have been added to the plat. Ms. Pope verified that Ms. Davis from the Planning Office had called Mr. Griggs to inform him of the requirements; Mr. Griggs stated that she had called him, but that he had been unable to provide the required items due to illness.

Mr. Griggs stated that he had bought the building, which was represented as being commercial, at auction a few years ago. He had contacted the City of Siloam Springs at that time, who informed him that the property was, "probably grandfathered in as commercial, otherwise we could go ahead and rezone it commercial." He stated that they began remodeling the existing building, but that he fell ill shortly thereafter and had been unable to resume remodeling until July of 2007. He stated that he contacted the City of Siloam Springs again, but that they told him that they deferred to the Benton County Planning Board.

Mr. Griggs stated that this is an existing building on one acre of land. He emphasized that the only changes to it had been to the inside of the existing building; the land itself had not been disturbed at all, so nothing that affected the runoff had been done. Mr. Griggs informed the Board that he had originally put the property up for sale, and that three parties had expressed interest in the building, but had later decided that the economy was changing and that they would not purchase the building.

Mr. Griggs stated that the property is currently up for sale and that he was told by his realtor that it could be one to two years before he is able to sell the property. He felt that putting a small car lot at this location would be a stop-gap measure to pay the interest on the mortgage he took out on the property. He added that if getting the car lot approved would be too difficult, he would abandon the idea. He also mentioned that he would try leasing the building.

Ms. Pope stated that the Board had received a survey of the property which showed the existing structures on site; she said that the Board had requested more detail regarding how many cars would be on the lot and where they would be parked. She clarified that Mr. Griggs variance of the drainage study requirements would not be granted.

Mr. Griggs stated that this property is on the highway; he contended that the front of the property has always drained into the ditch by the side of the highway and the rear of the

property drains into a dry creek bed. He asserted that the property is at the top of a hill and has never had a drainage issue. He reiterated that he had not made any changes to the property.

Mr. Sorey asked if there were pictures taken of the site; Ms. Pope stated that she could show the Board the photographs, but that she did not recall that the property was at the top of a hill.

Mr. Ward stated that one of his concerns was what the topography was like; he said that when the Board was shown photographs of the site previously, he did not get the impression that it was at the top of a hill.

Mr. Sorey stated that the applicant bought the property and had not made any changes to it; he merely wanted to park some cars on the property. Mr. Griggs interjected that his intention is to lease the property to some sort of service provider; once someone leases the property, he would remove the cars from the property. He emphasized that if gaining approval for the car lot was a problem, he would not proceed with his plans.

Mr. Sorey stated that if the applicant is not adding any gravel to the property and is not expanding the building... Ms. Pope interjected that there is no gravel on site, only dirt and grass. Mr. Sorey stated that the issue then is for the Board to understand where the automobiles will be parked and how many vehicles will be on the property.

Mr. Griggs stated that there will be a maximum of ten cars on the property at any given time, but that they will probably average fewer than five cars at a time.

Mr. Sorey asked how long the building had been on the property; Mr. Griggs answered that it had been built in the 1950s; he added that it had been completely redone - they "built a building over top the old building, then we tore the old building out from under it."

Mr. Sorey called for any public comment on the project - there was none.

Ms. Pope stated that, "Mr. Griggs didn't know about the TAC meeting, or if he knew, he didn't understand that he was supposed to come to the TAC meeting... some of that could have been handled at our TAC meeting." Mr. Sorey concurred.

Ms. Pope asked Mr. Griggs specifically what he was seeking approval for at this meeting; Mr. Griggs replied that he wanted to be able to use the existing building for commercial purposes. He has been unable to lease the building thus far; interested parties have been deterred by the lack of a commercial designation of the building.

Mr. Sorey stated that a potential problem with anyone else leasing the property would be if they made any changes to the property that might affect drainage, access, or a neighbor's visibility. He also said that the Board would need to know about what type of operation a new leaser might conduct from the property. Mr. Griggs assured the Board that if someone leased the building and needed to make any improvements, they would get the appropriate permits to do so. Mr. Sorey stated that he was more concerned with any improvements done outside of the building or the effects of operations outside of the building.

Mr. Griggs stated that if they cannot have the small car lot on the property, he and his wife had discussed turning the building into a used furniture store.

Mr. Ward suggested that the drainage study be done in order to answer some of the many questions concerning this project; he said that the variance request states that the property is on top of a hill, but that the property does not appear to be on top of a hill. Mr. Griggs stated that the Highway Department had been to his neighbor's property (to the south of Mr. Griggs' property); his neighbor's property is at the peak of the hill, and no culvert was required. Mr. Griggs stated that his property is less than 300 feet downhill down hill from this neighbor and that the drop between the two properties is less than one foot in elevation. He added that he did install a standard culvert and that his property is the first at the top of the hill to drain into the Highway Department's ditch.

Mr. Griggs stated that none of the people interested in his property wanted to buy the property until they knew for certain that it was zoned commercial. Mr. Sorey reminded Mr. Griggs that there is no zoning in the County. Mr. Griggs stated that he understood that and that he needed to do something to generate revenue to avoid foreclosure.

Mr. Kneebone pointed out a lack of public comment against the project.

Mr. Griggs stated that the Northwest Arkansas Gemology Society is next door to him and that they have worked well together in the past and that this neighbor has no issues with the proposed project.

Mr. Sorey verified that the applicant had done the required public notification; Mr. Griggs assured him that he had.

Mr. Sorey stated that if there are no changes made to the property, then there would be no increased flow.

Mr. Henry asked if a parking lot was being added to the property; Mr. Griggs stated that they would not be adding a parking lot and that the building was an existing building.

Ms. Pope stated that the building is a "spec building." She questioned whether the applicant would be putting any gravel down; Mr. Griggs stated that he would not. Mr. Henry stated that if that was the case, he did not have any concerns regarding drainage.

Mr. Sorey expressed his concern that if the Board grants its approval for a ten-car lot, the next owner could expand it to a fifty-car lot in the future. He believed that the Board should limit its approval to the ten-car limit. Mr. Ward concurred. Mr. Griggs interjected that there would be a maximum of ten cars on the lot and reiterated that he just wanted to use the property to make a small amount of income.

Mr. Kneebone asked if the Board would be policing this in the future by adding a stipulation that if Mr. Griggs sells the property, no cars could be added to the lot without the project coming back before the Board. Mr. Sorey began, "If the operations change..." Mr. Kneebone enquired whether or not the Board could legally do that. Ms. Pope stated that they could. Mr. Sorey added that certain operations would require additions to the facility. Mr. Ward said that the applicant is asking for a variance and asked for verification that conditions could be placed on the approval of the variance; Mr. Kneebone, Mr. Sorey, and Ms. Pope all answered affirmatively.

Ms. Pope stated that it would be an acceptable condition of approval for the Board to limit the applicant to selling a certain number of cars on this lot until the building is leased or sold, then require that a large scale development application be brought to the Board.

Mr. Kneebone made a motion to approve the variance from large scale development requirements, subject to the stipulations that the lot consist of no more than ten cars at a time and that a large scale development application will be required when the property is leased or sold; Mr. Henry seconded the motion. Mr. Gray, Mr. Henry, Mr. Kneebone, and Mr. Sorey all voted in favor of the variance request; Mr. Ward voted against the variance request. The motion was passed.

The Board then returned to its discussion of the lot split in **Rohrbough Subdivision, Lot 2-A** on Pleasant Ridge Road in Rogers. Mr. Sorey checked to see if Don Phillips of Phillips Land Surveying or his client had arrived at the meeting; there was no response. Ms. Pope stated that Mr. Phillips may have missed the meeting because he is awaiting approval from the City of Rogers on this project. She added that if the Board wanted to take action on this project without Mr. Phillips being present, Staff was satisfied.

Mr. Gray made a motion to approve the lot split, subject to the stipulation that the applicant receive approval from the City of Rogers; Mr. Ward seconded the motion.

Mr. Sorey called for any public comment on the project - there was none.

Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward all voted in favor of the project. The motion was passed.

8. Preliminary Plat Subdivision - **Lost Rock Ranch, LLC** - 7927 Lakeview Bay Road, Rogers - Community by Design

Morgan Hooker of Lost Rock Ranch, LLC and Brian Teague of Community by Design represented the preliminary plat subdivision.

Ms. Pope reviewed the list of stipulations:

1. The most up-to-date flood certification is required. The applicant added an updated flood certification, but it has the wrong date on it.
2. The road profiles, including slopes, are needed on the plat. The applicant did submit revised road profiles with slope percentages shown on it. The highest percentage shown was 21.03%, but most of them were lower than that.
3. The applicant must submit the petition to vacate the County road before the final plat will be approved. The petition to vacate the County road has not yet been submitted.
4. A statement regarding "no adverse impact" is necessary on the drainage report. Ms. Pope asked if the applicant had submitted this item yet; Mr. Teague answered that the information had been added to the plans. Ms. Pope was uncertain of whether that would suffice; Mr. Sorey and Mr. Henry both felt that the information should be added to the drainage report.
5. The applicant should contact Benton County Environmental Services regarding erosion control at the site. Ms. Pope stated that she did not know if the applicant had contacted Environmental Services, but stated that they did have some erosion control measures shown in their plans.

6. Submit information on the sanitary waste step system. Ms. Pope stated that the applicant had submitted some details regarding the waste water system; she stated that the only thing that was missing at this time was the permitting information from ADEQ and added that the system would have to be fully permitted.
7. Submit information on the bonding of the sanitary waste system. Ms. Pope said that the bonding information is one of the ADEQ permitting steps.
8. Submit a copy of the Lost Rock Ranch covenants. A copy of the covenants has not yet been submitted, but the applicants are working on them.
9. Correct "Tract A" labeling. This item has been corrected.

Mr. Kneebone asked if the maintenance and operation information for the waste water system had been submitted to Staff yet; Ms. Pope stated that it had not been. Mr. Hooker interjected that Greenfield Capital will be operating the waste water system and stated that he would get the information to Staff.

10. Add detail to plans regarding slopes, grades, and contours (notes and specifications). Please see item #2.
11. Acquire surveyor's stamp on the plans. A survey that included the surveyor's stamp was submitted to Staff. Ms. Pope asked if the Board has received a copy of it; they had.

Ms. Pope made the observation that the applicant had addressed many items, but they still had several items that were missing or incomplete.

Mr. Henry asked what was said regarding the covenants; Ms. Pope informed him that they had not been submitted. Mr. Hooker stated that he thought that they were to provide a copy of the covenants prior to applying for their final plat approval; Mr. Sorey stated that that is usually the case. Ms. Pope stated that her primary concern was the maintenance and operation information for the waste water system; Mr. Hooker stated that that information would be part of the POID versus the covenants.

Ms. Pope stated that some details regarding slopes, grades and contours had been added to the plans; she remarked that, "there was a lot of engineering talk last time." She suggested that the Board take a few minutes to review the newly-submitted information. She stated that her biggest concern, besides the approval of the waste water system, is the road grades.

Mr. Hooker stated that they would like to have approval of their preliminary plat subdivision contingent upon ADEQ and Health Department approval of the waste water system. He addressed the issue of road grades, saying that they had looked at the existing gravel roads in the area; he maintained that it is simply "a very hilly area."

Mr. Teague stated that he had researched State and County road grade requirements since the last meeting and found that the requirements allowed gravel roads to have grades over 10-15%, but that these grades could only be maintained for limited distances; he gave the example that a 15% grade should be maintained for a distance of 250 feet or less. He felt that these were just general guidelines; he stated that on gravel

road 11 the applicant exceeds the guidelines, but it is "mainly on top of the ridgeline, where there won't be just a whole lot of water generated."

Ms. Pope stated that the Board might need more time to go over the information; the information was submitted to Staff on Friday, and this was the Board's first opportunity to see it. Mr. Hooker concurred and stated that the applicant had no objections to using this time to answer any questions the Board might have.

Mr. Sorey encouraged the Board to use the microphones during any discussion on this project so that the record would reflect those discussions accurately.

Mr. Sorey said, "In looking at the profiles, we've got three lines called out: you've got existing ground, twenty-five foot right; existing ground, twenty-five foot left; and finish grade at center line. Is that finish grade at center line a proposed finish grade, or is that an existing finish grade?" Mr. Teague answered that it is a proposed finish grade on gravel road 2 and on County Road 600 and it is the existing finish grade on all the other roads.

Ms. Pope verified that proposed slopes and grades are shown on the plans for gravel road 2 and on County Road 600; Mr. Teague stated that that was correct. Mr. Teague then stated that he needed to correct himself: he stated that they are proposing to relocate a portion of County Road 600, so the slopes and grades for that portion are proposed, but the rest of County Road 600 is existing. He referred to Sheet 8 of their plans and pointed out the "begin construction" and "end construction" notations on the plans.

Mr. Sorey asked about the portion of the road that is being relocated and whether or not the applicant had resolved the issue of an off-site easement that was needed. Mr. Hooker stated that they were close to resolving the issue, but they could shift everything down to start at their property, if necessary. Mr. Sorey remarked that the applicant needed to either acquire the easement or shift the planned location in order for the Board to be able to vote on the project.

Ms. Pope asked the Board if they needed more time to review the plans; Mr. Sorey stated that he "would like to be able to use this time to ask some questions," but felt that it would be too time consuming to try to review the plans in order to know which questions to ask.

Mr. Sorey called for any public comment on the project - there was none.

Mr. Sorey addressed the Board, stating that the applicants had provided a substantial amount of information and asked for their opinions or thoughts. Mr. Kneebone stated that the applicants were lacking too many items for him to approve the project at this time. Mr. Ward concurred that there was a lot of information to digest.

Mr. Henry asked about the road grades that were 16% and greater and whether the applicant planned to leave the steep grades as is; Mr. Hooker answered that they had, "done quite a bit of research on this across the country and other developments like this and it's pretty common to see road grades." He stated that they have a project in Fayetteville called Ruskin Heights in which they have 17% slopes; he added that 20% slopes can be found all over downtown Fayetteville.

Ms. Pope stated that she had had the opportunity to discuss this matter with the Fire Marshal. There is currently no fire protection in the area and the Pinetop Fire District has not begun construction. She said, "As far as street grades, I think it was the opinion of the Fire Marshal that around 15% is better... I'm not saying that more couldn't be allowed, but I think that was his general opinion..." She expressed her concern regarding the slope of 21.03% shown on the plans and added that in some hilly areas, 18% grade was understandable. She told the applicants that they would have to convince this Board and the Fire Marshal, and added that emergency services response to the area at this time would be slow.

Mr. Hooker stated that they had been working with the Air Evac services and asserted that that was part of the appeal of a development like Lost Rock Ranch, that it was comparable to camping. He felt that people would not expect a fire truck to respond to a campsite in the woods. He asked if there was a grade that seems reasonable; he asked, "Do we cut the mountain down or do we maybe have a fire truck come out there once every twenty years?"

Mr. Sorey stated that, from an engineering standpoint, his concern is that whatever they decide to do is sustainable and "that it doesn't tear itself apart." Mr. Sorey stated that he had looked at some of the drainage calculations for the some of the ditches along the roads with steep grades; he stated that he understood what water flowing through these ditches would do, saying "they keep cutting until they find the bottom, and the bottom is something hard." He asserted that these ditches would only widen and deepen over time, until they undermined the roads. He stated that how the applicants proposed to stabilize the ditches and how they planned to maintain gravel roads that have a 15% grade for 500 feet may be answered in the documentation (along with his other concerns and questions), but he had no way of knowing that at this meeting (since the Board had not had time to review the material.)

Mr. Hooker stated that the applicant has a landscape architect working on the project, whose "focus is sustainable development," and they are researching what types of plants might be used to stabilize the ditches, etc., and added that they will have a full-time caretaker on-site who will be responsible for maintenance.

Mr. Sorey reviewed the list of stipulations from the TAC meeting:

1. The most up-to-date flood certification is required. Mr. Sorey stated that this had already been addressed.
2. The road profiles, including slopes, are needed on the plat. Mr. Sorey stated that they have this information, but the Board will need to know how the grades are maintainable.
3. The applicant must submit the petition to vacate the County road before the final plat will be approved. Mr. Sorey asked the applicant about this stipulation; Mr. Hooker stated that they will be submitting this soon. Mr. Hooker asked if they just needed to ensure that this was done before final plat; Mr. Sorey answered that this process could take a while. Ms. Pope suggested that they submit the petition before beginning construction, since construction in a right-of-way is prohibited. Mr. Hooker stated that they could construct the road on their property first, then tie into the County road after the petition is granted; Mr. Sorey stated that he had dealt with a similar situation and as long as the applicant does not close the County road this should be an acceptable

solution. Ms. Pope pointed out that the applicant wanted the County road vacated; Mr. Hooker stated that the County Judge seemed to be in favor of vacating the road. Mr. Sorey reiterated Ms. Pope's statement regarding the submission of the petition before beginning construction.

4. A statement regarding "no adverse impact" is necessary on the drainage report. Mr. Sorey asked if the applicant would get the necessary statement into the drainage report; Mr. Teague assured him that he would.

5. The applicant should contact Benton County Environmental Services regarding erosion control at the site. Mr. Sorey asked if this stipulation had been addressed; the applicant has not completed this item.

6. Submit information on the sanitary waste step system. Mr. Sorey stated that the Board had a packet of information on the waste water system; he added that Mr. Borman would be interested in reading this information. Mr. Ward said that he would also be very interested in this information as well; stating that the maintenance of the roads are his primary concern, then the long-term operation and maintenance of the waste water system.

Mr. Hooker asked about contacting the Benton County Environmental Services; Mr. Sorey told Mr. Hooker that he would provide him with a list of the stipulations that the applicant needs to address at the end of the meeting.

7. Submit information on the bonding of the sanitary waste system. Ms. Pope reiterated that the bonding information is one of the ADEQ permitting steps; Mr. Sorey said that this item could be handled as a condition of approval. Mr. Ward asked if the permit is at ADEQ at this time; Mr. Hooker stated that ADEQ's review of their permit application is almost complete. Ms. Pope asked if they could submit a copy of the ADEQ application; Mr. Hooker responded affirmatively.

8. Submit a copy of the Lost Rock Ranch covenants. Mr. Sorey asked the applicant about this item; Mr. Hooker asked if they could submit the covenants that they currently have and one that addresses the road maintenance; Mr. Sorey and Ms. Pope both responded that a draft would be acceptable. Mr. Hooker stated that they "have the covenants to that point, so I can get that to you pretty quickly."

9. Correct "Tract A" labeling. Mr. Sorey asked for clarification on this item; Ms. Pope stated that "Tract A" appeared in several places on the previous plat. Mr. Sorey asked if this stipulation had been done; Mr. Hooker stated that it had been.

10. Add detail to plans regarding slopes, grades, and contours (notes and specifications). Mr. Sorey noted that the Board has a copious amount of information to review. Mr. Sorey asked if there were multiple copies of construction specifications; Ms. Pope stated that only two copies had been submitted to Staff. Mr. Sorey stated that at least two more copies would need to be submitted; Mr. Ward and Mr. Henry will need to review this information, as well. Mr. Sorey also noted that the detail regarding the slopes, grades and contours should be added to the plans.

11. Acquire surveyor's stamp on the plans. Mr. Sorey asked if this was submitted; Ms. Pope answered affirmatively.

Mr. Sorey added that he had no problem with approving the applicant's preliminary plat subdivision with the condition that they receive approval of the waste water system from

the Health Department and ADEQ. He asked that the applicant get the additional information to Staff by November 28th.

Mr. Teague asked for feedback from the Board regarding roads and road grades; he stated that he had researched State specifications for gravel roads and the Forest Service's specification for forest roads and that he had measured grades on roads leading out to Lost Rock (Highway 12). He stated that he had encountered grades up to 20%, with the most common being grades of 15-16% for over 500 feet.

Mr. Sorey asked what the surface material was on the road; Mr. Teague answered that it was gravel and stated that a fire truck would have to use these roads to get to Lost Rock. He said that the roads within the development are no worse than the roads en route to the development. He invited the Board to go and inspect the roads for themselves.

Mr. Sorey that, as long as the applicant approved, he wanted to "take a field trip" to the site to look it over; Mr. Hooker volunteered to meet Mr. Sorey and anyone else that wanted to visit the site and lead them out there. Mr. Sorey said that he wanted to schedule the site review for the first week in December; Mr. Kneebone stated that he would like to go as well.

Ms. Pope stated that in the interest of FOI, it would probably be best if all of the Board and Staff go together. Mr. Sorey noted that the press was also invited; Ms. Pope concurred.

A brief discussion of the Urban-Wildland Interface Code occurred.

Mr. Hooker requested that the project be tabled.

Mr. Kneebone made a motion to table the preliminary plat subdivision; Mr. Ward seconded the motion. Mr. Gray, Mr. Henry, Mr. Kneebone, Mr. Sorey and Mr. Ward all voted in favor of the project. The motion was passed.

Mr. Sorey adjourned the meeting for a five-minute break.

Other Business:

1. Large Scale Development - **OAK Home Builders** - 13960 Hiwassee Road, Hiwassee - Tony Kiesel

Tony Kiesel represented the project.

Ms. Pope refreshed the Board's memory regarding the project, stating that it has a small office and some concrete storage bins. She stated that Mr. Kiesel was present at the meeting to ask some questions and to discern what the Board would have him do.

Mr. Kiesel stated that he has had an office for his custom home-building business on this property for the last ten years; his son began a landscaping business and Mr. Kiesel offered him space on his property to store his materials. He stated that he had obtained a permit to build enclosed storage bins from Benton County Planning. He stated that his son does have a desk and a computer in the office, and that he meets his employees at the office in the morning to coordinate the day's work. He maintained that the office is generally unmanned. Mr. Kiesel asked the Board what he needed to do at this time.

Ms. Pope stated that there is no plumbing in the office; she added that Mr. Kiesel had asked her if he were to remove the office and use only the dry storage area if it would make any difference.

Mr. Sorey asked if this had come to Staff as a variance from large scale development regulations request, since it was to be used only for storage and there was not supposed to be an office building at all. Ms. Pope stated that the applicant had applied only for a building permit for the concrete storage bins and Staff understood that there would be no office building; she added that someone from Benton County Planning had driven by the location, discovered the unauthorized building and took photographs (which were shown at the TAC meeting.)

Mr. Sorey stated that the business at this location would create traffic entering and exiting the highway, as well as the potential for people visiting the office. He stated that the large scale development requirements do not exempt businesses that have no plumbing. He emphasized that if it will be a commercial venture, then it must adhere to the large scale development requirements.

Mr. Henry stated that if customers are coming to the site to purchase materials, then it should comply with the large scale development regulations. Mr. Ward stated that "it becomes a public place at that point, where people are coming and going." Mr. Kneebone asked if there were customers coming into that office; Mr. Kiesel answered that people do stop by the property.

Mr. Sorey stated that he didn't believe that the large scale development application would have to be a complicated process, but did feel that the process must be followed. Mr. Kiesel stated that the storage bins are closest to his neighbor, Jason Toney, who is a chicken farmer; he added that they have a good relationship and he did not feel that Mr. Toney would have an issue with it.

Mr. Sorey emphasized that the large scale development regulations require that all owners of property adjacent to the parcel on which the business will be located must be notified.

Mr. Kiesel asked, "What if I just move the office out and put him back down in my office that's been there for years."

Mr. Kneebone asked if they would still have customers coming in if the office were moved; Mr. Kiesel answered that he currently has customers coming in to his business and has had for the last ten years due to his home-building business.

Mr. Sorey stated that though the home-building business is "grandfathered in," the applicant applied for a building permit for new facilities, so it should have come through the large scale development process. Mr. Sorey stated that the applicant can use an existing survey and a site plan sketch with topography from the quadrangle map; 2-foot contours are available from the County, so the applicant would not have to "break the bank."

Mr. Kiesel was informed by the Board that a large scale development would be required.

2. Benton County Planning Board Voting Process Discussion

Ms. Pope stated that in the appeals process, it has been noted that the Board does not give reasons for their approval or disapproval of projects. She said that there may be discussion of the projects, but there are no "hard and fast statements on the record" regarding why members voted the way they did.

Mr. Sorey asked if such statements were mandatory; Ms. Pope said that it was not. Mr. Sorey stated that he was under the impression that Staff did not necessarily want the reasons for their votes on the record; Ms. Pope agreed that "sometimes, vagueness is better than being specific." She stated that during recent appeals, the attorney representing the Benton County Planning Board had to say many times that the Board did not give reasons for their decisions, so she was bringing the question of whether or not to go on the record with reasons to the Board. She noted that former Planning Board member John Butler used to say that where he was from in California, they were required to give the reasons for voting in favor of or against projects. She left it up to the Board to decide whether it would be helpful or if it would simply slow down the process. She stated that if the members wanted the reasons noted, forms could be used rather than stating their reasons out loud.

Mr. Sorey stated that he was of the opinion that his "yes ought to be yes, and my no ought to be no," and felt that if the Justices of the Peace looked at the minutes pertaining to whatever project is called into question, they should be able to ascertain reasons from the conversation taking place.

Mr. Gray asked if there was a precedent with any other voting body for taking this action; Ms. Pope stated that she had seen this with several other entities. Mr. Kneebone observed that the Congress of the United States does not require its members to go on the record with the reasons for their votes.

Ms. Pope stated that it was basically a legal issue; Mr. Sorey stated that "that's a two-edged sword." Ms. Pope concurred and said that in some situations, specific reasons might be desirable but not in other situations (if it's to some legal advantage.) She said that the Board does not offer an opinion or a letter stating, "The Board found these facts and they said it's approved," or "The Board found these facts and they said it's denied." She stated that the Board would continue to deal with this "realm of legality" due to the growth in Benton County and the potential for an increasing number of lawsuits.

Mr. Henry felt that it would not be prudent to document exact reasons for decisions. Ms. Pope asked the Board if they would like for her to consult County Attorney Robin Green on the matter. Mr. Sorey felt that if the Justices of the Peace required reasons for approval or denial on certain projects, they could require the presence of the Planning Board members at the appeal hearing. Mr. Kneebone concurred, stating that he currently attends all of those meetings.

Mr. Ward noted that reasons would have to be given for every vote; Ms. Pope concurred that it would become a routine process. Mr. Gray stated that explaining the reasons for a vote in favor of a project would be simple.

Mr. Sorey stated that, in the past, he has voted against a motion due to the wording of the motion (when he was not necessarily against the project itself.) He reiterated that if

the Justices of the Peace want the opinion of the Board members, they should be able to require the Board members to come to a meeting or hearing.

Mr. Ward stated that he didn't have any issues either way, but felt that comments from the meeting minutes should show why a Board member voted the way he or she did.

Mr. Henry asked if there was a proposed plan for implementing the procedure of recording the reasons for each vote; Ms. Pope stated that the reasons could be recorded verbally for the record. Mr. Ward gave the example of voting against a project due to missing information; Ms. Pope gave the example of voting for a project because a Board member believes that the project meets requirements.

Mr. Kneebone did not feel that it was necessary to record the reasons for votes; Mr. Gray felt that the Board members were accessible enough that anyone could simply ask them why they voted a certain way. Mr. Kneebone pointed out that there had only been five appeals during his whole tenure on the Board and the issue is usually compatibility. Mr. Sorey pointed out that the County does not have zoning, so he will not deny a project based on compatibility.

The Board decided not to discuss reasons for their votes.

Adjournment:

The meeting was adjourned at 7:30 p.m.